

ORIGINAL



0000160885

BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

SUSAN BITTER SMITH, Chairman  
BOB STUMP  
BOB BURNS  
DOUG LITTLE  
TOM FORESE

RECEIVED

2015 MAY 19 P 4: 36

AZ CORP COMMISSION  
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION  
OF GLOBAL WATER – SANTA CRUZ  
WATER COMPANY, INC. FOR AN  
EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY

DOCKET NO. W-20446A-14-0290

RESPONSE TO STAFF REPORT

DOCKETED

MAY 19 2015

DOCKETED BY

*[Signature]*

Global Water – Santa Cruz Water Company (“Santa Cruz”) provides this response to the Staff Report in this docket. Santa Cruz appreciates Staff’s recommendation to approve the extension of its CC&N to serve the Estrella Gin parcel, which is adjacent to Santa Cruz’s existing certificated area. The Estrella Gin parcel is owned by the City of Maricopa, and it is a high priority commercial development project for the City. Santa Cruz looks forward to extending service to this parcel, and to continuing to provide the City and its residents and commercial establishments with high quality potable water service.

Santa Cruz has one concern with the Staff Report. The Staff Report contains the following proposed condition, “The Company should be placed on notice that, to the extent possible, it should plan to fund infrastructure needs with equity and long term debt in order to bring more balance to its infrastructure.”<sup>1</sup> Santa Cruz respectfully disagrees with this proposed condition. This proposed condition was based on Staff’s concerns about Santa Cruz’s capital structure. Santa Cruz agrees with Staff that “[a] utility’s capital structure is an indicator of financial soundness.”<sup>2</sup> Santa Cruz also agrees with

<sup>1</sup> Staff Report, page 4, recommendation no. 2.

<sup>2</sup> Staff Report, Exhibit 3 (Staff Financial Report) at page 3.

1 Staff that an excessive amount of advances and contributions in a utility's capital structure  
2 can be problematic. Indeed, this is a point Santa Cruz and its affiliates have made on  
3 many occasions in the past. So Staff and Santa Cruz are on common ground about the  
4 desirability of a balanced capital structure and about the dangers of excessive advances  
5 and contributions.

6 The area of disagreement is essentially, "how much is too much" in terms of  
7 advances and contributions. The Staff Report states "Staff has determined that a  
8 financially sound utility company, on average, should have no more than 30 percent  
9 AIAC and/or CIAC in its capital structure."<sup>3</sup> Staff calculates that advances and  
10 contributions were 35.29% of Santa Cruz's capital structure at the end of 2014, or 35.57%  
11 on a pro-forma basis considering the effect of the CC&N extension.<sup>4</sup> In other words,  
12 Santa Cruz has only 5% more than Staff recommends. Further, Staff has no specific  
13 "study, report or analysis" supporting its specific 30 percent figure.<sup>5</sup>

14 Santa Cruz believes that 35% is not an excessive amount of advances and  
15 contributions. Advances and contributions have significant advantages and  
16 disadvantages. The biggest advantage is providing a low cost source of capital, benefiting  
17 ratepayers, as well as limiting the amount of debt and equity the utility must raise. But  
18 this is also the biggest disadvantage, because advances and contributions are excluded  
19 from rate base. Thus, excessive advances and contributions can leave a utility with too  
20 little rate base, and therefore result in rates that are too low for financial viability.

21 This is not a concern with Santa Cruz. Santa Cruz has over \$59 million in equity,  
22 which is over 62% of its capital structure.<sup>6</sup> It is not thinly capitalized. Further, as Staff  
23 acknowledges, Santa Cruz has over \$5.5 million in positive cash flow, including  
24 approximately \$2.3 million in net income. Specifically, "Staff found that Santa Cruz had

25 <sup>3</sup> Staff Report, Exhibit 3(Staff Financial Report) at page 3.

26 <sup>4</sup> Staff Response to Global Data Request 1.02 (work papers), file "Capital Structure – Santa Cruz  
CCN 13-0290.xls, tab "Schedule TBH-1".

27 <sup>5</sup> Staff Response to Global Data Request 1.03.

28 <sup>6</sup> Staff Response to Global Data Request 1.02 (work papers), file "Capital Structure – Santa Cruz  
CCN 13-0290.xls, tab "Schedule TBH-1", line 18, column A. Figure is for the year ending  
December 31, 2014.

1 requirements limiting management's discretion regarding capital structure is not  
2 necessary.

3 Further, Staff's 30% figure has not been approved in a rule, and applying it a rigid  
4 manner risks violating the Arizona Administrative Procedure Act ("APA"). The recent  
5 Arizona Court of Appeals opinion in *Arizona State University ex rel. Arizona Board of*  
6 *Regents v. Arizona State Retirement System*<sup>11</sup> clarifies that under the APA, "an agency  
7 statement is a rule, subject to the APA's rulemaking procedure, if it, first, is generally  
8 applicable, and, second, implements, interprets or prescribes law or policy, or describes  
9 the procedure or practice requirements of an agency."<sup>12</sup> Thus, if the Commission imposes  
10 conditions on all utilities if they do not meet the 30% standard, it would be a statement of  
11 "general applicability" that "implements, interprets or prescribes... policy"<sup>13</sup>, and such a  
12 practice would therefore be an invalid rule. This problem can be avoided by not using  
13 30% as a fixed standard, and instead looking holistically at each utility's capital structure.

14 In summary, Santa Cruz shares Staff's belief in the importance of a balanced  
15 capital structure and concern with excessive advances and contributions. Here, Santa  
16 Cruz has a reasonable capital structure, with advances and contributions making up only  
17 35% of its capital structure, and with equity exceeding 62%. Santa Cruz already has  
18 Commission requirements for hook-up fees and main extension agreements, and Santa  
19 Cruz needs some flexibility in determining the appropriate method of financing any  
20 particular project. Thus, Santa Cruz requests that this condition not be adopted. As a  
21 compromise, the following requirement from the rate case could be added as a condition,  
22 "all future capital requirements will be met with debt, equity, hook-up fees, or through  
23 main extension agreements." Santa Cruz appreciates the Commission's consideration of  
24 this matter.

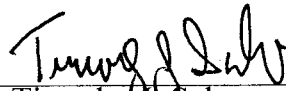
25  
26  
27 <sup>11</sup> No. 1 CA-CV 14-0083, filed May 5, 2015. 2015 WL 2328733. Not yet published in Arizona  
Reports or Arizona Advanced Reports.

28 <sup>12</sup> *Id.* at ¶ 16.

<sup>13</sup> *Id.* at ¶ 15, quoting A.R.S. § 41-1001(19).

1 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of May 2015.

2 SNELL & WILMER L.L.P.

3  
4 By 

5 Timothy J. Sabo  
6 One Arizona Center  
7 400 East Van Buren Street  
8 Phoenix, Arizona 85004

9 *Attorneys for Global Water – Santa Cruz*  
10 *Water Company, Inc.*

11 Original +13 copies of the foregoing  
12 filed this 19<sup>th</sup> day of May 2015, with:

13 Docket Control  
14 Arizona Corporation Commission  
15 1200 West Washington  
16 Phoenix, AZ 85007

17 Copies of the foregoing hand-delivered/mailed  
18 this 19<sup>th</sup> day of May 2015, to:

19 Lyn A. Farmer, Esq.  
20 Chief Administrative Law Judge  
21 Hearing Division  
22 Arizona Corporation Commission  
23 1200 West Washington  
24 Phoenix, AZ 85007

25 Janice Alward, Esq.  
26 Chief Counsel, Legal Division  
27 Arizona Corporation Commission  
28 1200 West Washington  
Phoenix, AZ 85007

Steven M. Olea  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007

By 

21675202.1